In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 221

FRANK CANNON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, an employee of the Stanley Hanks Painting Company, sued under the Federal Tort Claims Act, 28 U.S.C. 1346, for personal injuries sustained when he fell, while painting, from a scaffold at the Granite City, Illinois, Army Engineers Depot. Petitioner's employer had entered a contract with the United States for the painting of certain buildings in the Depot, including the building on which petitioner

was working when injured. It is undisputed that the defective scaffolding was furnished by Stanley Hanks.

The alleged basis for liability on the part of the United States was a violation of the Illinois Structural Work Act (Ill. Rev. Stat. 1955, Ch. 48, para. 60, 64 and 69), known as the "Scaffold Act." Petitioner contended below that portions of the contract between his employer and the United States, which provided that the work would be conducted under the general direction of the Contracting Officer and that the work was subject to inspection, placed the United States "in charge" of the work within the meaning of the Illinois statute, and thus cast responsibility for the safe construction and erection of the scaffolding upon the United States. Applying standards set forth in a recent decision of the Supreme Court of Illinois,* both the United States District Court for the Southern District of Illinois and the Court of Appeals for the Seventh Circuit determined that the United States lacked sufficient control of the day-to-day work for liability to attach under the Illinois statute.*

It is apparent from both the opinion below (Pet. App. 25-28) and the petition for certiorari that the question is solely one of the interpretation and application of State law. There is no occasion for review by this Court of the uniform resolution of that question by the two courts below, both of which are regularly concerned with matters of Illinois law. Cf.

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* *Gannon* v. *Chicago, Milwaukee, St. Paul & Pac. Ry. Co.*, 22 Ill. 2d 305, 175 N.E. 2d 785 (1961).

Estate of Spiegel v. *Commissioner*, 335 U.S. 701, 707-708.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

JULY 1964.

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